

**CITY OF MORGAN HILL
JOINT SPECIAL AND REGULAR CITY COUNCIL AND
SPECIAL REDEVELOPMENT AGENCY MEETING
MINUTES - NOVEMBER 6, 2002**

CALL TO ORDER

Chairperson/Mayor Kennedy called the meeting to order at 6:00 p.m.

ROLL CALL ATTENDANCE

Present: Council/Agency Members Carr, Chang, Sellers, Tate and Mayor/Chairperson Kennedy

DECLARATION OF POSTING OF AGENDA

Deputy City Clerk/Deputy Agency Secretary Malone certified that the meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2

City Council and Redevelopment Agency Action

CLOSED SESSIONS:

City Attorney/Agency Counsel Leichter announced the following closed session items:

1.

CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

Significant Exposure/Initiation of Litigation

Authority: Government Code Sections 54956.9(b) & (c)

Number of Potential Cases: 2

2.

**CONFERENCE WITH LEGAL COUNSEL - POTENTIAL AND EXISTING LITIGATION:
CONFERENCE WITH REAL PROPERTY NEGOTIATORS**

Legal Authority: Government Code 54956.8 & 54956.9(a) & (c) (1 potential case)

Real Property(ies) involved: APN 728-31-007 & 008; 25.50 acres located on the southwesterly side of Cochrane Road (St. Louise Hospital property)

City Negotiators: Agency Members; Executive Director; Agency Counsel; F. Gale Conner, special counsel; Rutan & Tucker, special counsel

Case Name: San Jose Christian College v. City of Morgan Hill

Case Numbers: Ninth Circuit Court of Appeal No. 02-15693

Closed Session Topic: Potential Existing Litigation/Real Estate Negotiations

3.

CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION

Authority: Government Code section 54956.9(a)

Case Name: City of Campbell et al. v. CalPERS

Case Number: OAH 5119

Attendees: City Attorney, City Manager

4.

CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION

Authority: Government Code section 54956.9(a)

Case Name: Allivato v. City of Morgan Hill et al.

Case Number: Santa Clara County Superior CV 810111

Attendees: City Attorney, City Manager

5.

CONFERENCE WITH REAL PROPERTY NEGOTIATOR

Legal Authority: Government Code Section 54956.8
Property: APN 817-29-004, 605 Tennant Avenue, 439 sq ft
Negotiating Parties: For Property Owners: John Lincoln, Jr, Trustee of the John Lincoln Jr.
Trust; Robert E. Lincoln; John S. Lincoln
For City: Richard Hoffman; Jim Ashcraft; F. Gale Connor
Under Negotiation: Price and Terms of Payment

6.

CONFERENCE WITH REAL PROPERTY NEGOTIATOR

Legal Authority: Government Code Section 54956.8
Property: APN 817-08-026, 740 Tennant Avenue, 23.250 sq ft
Negotiating Parties: For Property Owners: Arthur A. & Susan A. Biedermann
For City: Richard Hoffman; Jim Ashcraft; F. Gale Connor
Under Negotiation: Price and Terms of Payment

7.

CONFERENCE WITH REAL PROPERTY NEGOTIATOR

Legal Authority: Government Code Section 54956.8
Property: APN 817-58-009, 16550 Railroad Avenue, 22.146 sq ft
Negotiating Parties: For Property Owners: Dieter Folk; Steven P. Belzer
For City: Richard Hoffman; Jim Ashcraft; F. Gale Connor
Under Negotiation: Price and Terms of Payment

8.

CONFERENCE WITH REAL PROPERTY NEGOTIATOR

Legal Authority: Government Code Section 54956.8
Property: APN 817-59-006, 16610 Cory Lane, 303 sq ft
Negotiating Parties: For Property Owners: Gary and Donita R. Cupps
For City: Richard Hoffman; Jim Ashcraft; F. Gale Connor
Under Negotiation: Price and Terms of Payment

OPPORTUNITY FOR PUBLIC COMMENT

Mayor/Chairperson Kennedy opened the closed session items to public comment. No comments were offered.

ADJOURN TO CLOSED SESSION

Mayor/Chairperson Kennedy adjourned the meeting to closed session at 6:01 p.m.

RECONVENE

Mayor/Chairperson Kennedy reconvened the meeting at 7:05 p.m.

CLOSED SESSION ANNOUNCEMENT

City Attorney/Agency Counsel Leichter announced that there was no reportable action taken in closed session and that closed session item 3 was continued to the conclusion of the regular agenda.

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

At the invitation of Mayor/Chairperson Kennedy, City Clerk/Agency Secretary Torrez led the Pledge of Allegiance.

PROCLAMATIONS

Mayor Kennedy presented Jeff Christian with a proclamation, declaring November 25 - 29, 2002 as *National Family Week*.

CITY COUNCIL REPORT

Mayor Kennedy reported on his trip to the City's Sister City in San Casciano, Italy. He stated that last week, he and his wife returned from a trip to San Casciano, at his own expense. He indicated that the group was fortunate to meet the Santa Clara County delegation which has a relationship with the Province of Florence. He stated that there was also a signing ceremony in the City of Florence on October 11 prior to the signing ceremony in San Casciano on October 12. He displayed photographs of the Sister City Signing Ceremony. He indicated that the Morgan Hill Sister City Committee is looking for new members and that they would be hosting a potluck on November 21, 2002 at 6:00 p.m. at the Hacienda Mobile Home Park Club House. He stated that everyone is invited to this potluck event.

CITY MANAGER'S REPORT

City Manager Tewes acknowledged the support of the community of Measure C, an important revenue measure, noting that 73% of the voters confirmed portions of the existing hotel/motel tax. He thanked the community for this support and indicated that staff recognizes that it has responsibilities as a city government to use these resources wisely. He said that later in the evening staff would be presenting a budget forecast and suggestions on how to accommodate some of the shortfalls.

CITY ATTORNEY'S REPORT

City Attorney Leichter indicated that she did not have a report to present this evening.

OTHER REPORTS

Council Member Chang congratulated Mayor Kennedy and Council Members Sellers and Tate on their overwhelming election victory.

Council Member Tate announced that the 33rd annual Founders Day Dinner is taking place this Saturday night at the Buddhist Temple. He said that tickets are still available and that they can be obtained by calling Jennifer Tate.

PUBLIC COMMENT

Mayor/Chairperson Kennedy opened the floor to comments for items not appearing on this evening's agenda. No comments were offered.

CONSENT CALENDAR:

Action: *On a motion by Mayor Pro Tempore Carr and seconded by Council Member Tate, the City Council unanimously (5-0) **Approved** Consent Calendar Items 1-10 as follows:*

1. **PROCLAMATION FOR VETERAN'S DAY**
***Action:** **Approved** Proclamation Proclaiming and Recognizing November 11, 2002, as Veteran's Day.*
2. **SUBDIVISION APPLICATION SD 02-06: CENTRAL-CENTRAL PARK (APN 767-27-037)**
***Action:** **Took No Action**, Thereby Concurring With the Planning Commission's Decision Regarding Approval of the Subdivision Map.*
3. **SUBDIVISION APPLICATION SD 02-07: LLAGAS-DELCO/DIVIDEND**
***Action:** **Took No Action**, Thereby Concurring With the Planning Commission's Decision Regarding Approval of the Subdivision Map.*
4. **ANNEXATION APPLICATION, ANX-00-02: COCHRANE-LUPINE - Resolution No. 5620**
***Action:** **Adopted** Resolution No. 5620, Amending Resolution No. 5608, Incorporating the Findings Required by the Local Agency Formation Commission.*
5. **COMMUNITY AND CULTURAL CENTER PROJECT OPERATIONAL PROCEDURES, POLICIES AND GUIDELINE SUPPORT**
***Action:** **Authorized** Amending the Contract Agreement with Sports Management Group to Provide Services With the Operational Planning for the Community and Cultural Center, Not to Exceed \$10,000, Subject to Review by City Attorney.*
6. **ADOPTION OF RECLASSIFICATION OF EVENT COORDINATOR POSITION AND SALARY RANGE TO THAT OF RECREATION SUPERVISOR (FACILITIES AND EVENTS)**
***Action:** **Adopted** Revised Classification Specification Assigning the Event Coordinator Position to the Recreation Supervisor Classification and Salary Range Under Management Resolution No. 5320.*

7. **FINAL MAP ACCEPTANCE FOR MONTE VISTA PHASE II (TRACT 9385)**
*Action: **Approved** the Final Map, Subdivision Agreement and Improvement Plans; **Authorized** the City Manager to Sign the Subdivision Improvement Agreement on Behalf of the City; and **Authorized** the Recordation of the Map and the Subdivision Improvement Agreement Following Recordation of the Development Improvement Agreement.*
8. **AWARD OF CONTRACT FOR CONSTRUCTION OF TENNANT AVENUE NORTHBOUND RAMP SIGNALS**
*Action: **Awarded** Contract to McGuire and Hester for the Construction of 101/Tennant Avenue Northbound Ramp Signals in the Amount of \$197,500, Subject to Review by City Attorney.*
9. **AWARD CONTRACT FOR OAK CREEK PARK TENNIS COURT RESURFACING**
*Action: **Awarded** Contract to Vintage Contractors, Inc. for the Construction of the Oak Creek Park Tennis Court Project in the Amount of \$27,630, Subject to Review by City Attorney.*
10. **SPECIAL CITY COUNCIL MEETING MINUTES FOR OCTOBER 23, 2002**
*Action: **Approved** the minutes as written.*

Redevelopment Agency Action

CONSENT CALENDAR:

Agency Member Tate requested that item 12 be removed from the Consent Calendar.

Action: *On a motion by Agency Member Carr and seconded by Agency Member Tate, the Agency Board unanimously (5-0) **Approved** Consent Calendar Item 11 as follows:*

11. **AQUATICS COMPLEX PROJECT MANAGEMENT**
*Action: **Authorized** Payment of \$11,245 to Richard Sampson Associates Inc. for Project Management Services Rendered for the Aquatics Complex Project.*
12. **LEED RATING ARCHITECTURAL SERVICES FOR AQUATICS COMPLEX**

Agency Member Tate inquired whether the Redevelopment Agency should invest on certification versus being qualified for certification, not investing money on certification for the Leed rating?

Recreation and Community Services Manager Spier indicated that staff reviewed the request for proposal criteria and that staff passed onto the architect the Agency's request to strive for sustainability/green building concepts contained in the ELS proposal. When staff brought the contract before the Agency, it included a specific line item for Leed certification. She indicated that the \$98,000 includes the process for obtaining certification. She stated that there is a price tag to having the certification process completed and all of the paperwork submitted. She said that the consultant has stated that this is not all of the cost as this is the only cost that they can identify at this time.

Agency Kennedy supported proceeding with the Leed certification. Although the consultant believes that the City can accomplish most of the objectives without having to pay for the certification, he felt that it is like any certification or license. He felt that it establishes a certain standard and a level of environmental qualities. If the City does not require this certification, the City may not attain what the Agency would like to achieve.

Agency Member Carr requested clarification as to whether the \$98,000 would attain certification? He said that whether or not the City spends the \$98,000 to obtain the certificate, the City would still complete the sustainable practices identified.

Ms. Spier said that in order for the architects to test themselves against the gold standards, they would have to start this process. If the City wants the architects to include certification as part of the processes it would involve using the \$98,000 because the architects would need to bring in other individuals and incorporate the wind survey. She stated that the architect is prepared, within the contract, to talk about the solar heating system and the green building concepts as they are incorporated in the design. She clarified that the \$98,400 is included in the current contract and that if certification is not desired, this amount can be deleted from the contract.

Vice-chairwoman Chang inquired how much funding would be required to meet the certification standards?

Ms. Spier indicated that the City would receive certification once the building is completed. She said that the process needs to be started through schematic drawings because if the City does not include certain aspects, points are lost. The City would need to commit to the standards that it would like to achieve. She indicated that she has been told that a gold standard is difficult to achieve and that the City has not applied gold standards with any of its projects. She said that ELS has indicated that it would cost \$98,000 to achieve a gold status, would include the design fees and that it can impact instruction costs.

Chairman Kennedy indicated that the building costs cannot be determined until the architect and the designers get into the design process. He said that the project's schedule calls for the estimate to be done after the architect gets to a certain point in the design, noting that they are not there yet. He did not believe that Ms. Spier or the consultants are in a position to provide building costs at this time.

Ms. Spier said that it is her understanding that the bronze certification is attainable, especially with some of the standards the City has established (e.g., solar heating). It is as the City moves up the certification process that it becomes more complicated and affects the construction dollars. She said that it is difficult to place a price tag on how certification would impact the overall project. She said that it could be stated that the City would like to keep an eye on the process but that the City is not ready to commit funds toward certification.

Agency Member Tate inquired as to other expenses involved other than \$98,000 for certification as he has been involved with a lot of certifications that require a lot of staff time. He questioned the need for certification as the architect indicates that he can achieve the design standards desired by the Agency, resulting in an approximately \$100,000 savings. He felt that in today's economy, the

City needs every cent it can save.

Ms. Spier responded that she does not have a figure to identify at this time.

Council Member Sellers noted that the Agency is concerned with construction costs and where it will be in the short term. He said that the main reason for certification and not cutting corners is for the long term benefits. He noted that staff suggests that the City proceed initially with certification but that it seems to conflict with the steps of getting started right of way. He felt that the Mayor's caution was well advised as long as the City knows that it can attain gold level and not end up with things that cost the City down the road. Also, the \$98,000 pales compared to the extras that are to be paid in energy costs and other features. He inquired how far down the road would the schematics be and whether this is a process that the City can begin and alter down the road?

Ms. Spier felt that it was important to keep a watch on the City's goal. Beginning the process at this time would give the City the gold standard. She felt that this would be part of the cost, that the architects keep checking. If staff keeps on schedule, staff proposes to bring the schematics for Agency consideration in December 2002. She felt that in a two-month period, the City would have a better idea on how it matches up. She said that the City may wish not to build to a gold standard, attaining silver or bronze standards. However, without knowing the construction cost factors in terms of the long term energy savings, is hard to determine. She expressed concern that the Agency would get through schematics and start the design documents only to find that it is going to meet a standard and not have the money to go after certification. She felt that the ELS would be willing to monitor the project until the end of schematics. At that time, the Agency can determine if it wishes to proceed with the certification process.

Action: *On a motion by Vice-chairwoman Chang and seconded by Agency Member Sellers, the City Council unanimously (5-0) **directed** staff to proceed with the design to such a point that the Agency can determine what the cost would be of doing a full gold level Leed certification. The Agency to make a decision at that point whether to proceed or change course at a 20% cap.*

City Council and Redevelopment Agency Action

CONSENT CALENDAR:

Action: *On a motion by Mayor Pro Tempore/Agency Member Carr and seconded by Council/Agency Member Tate, the City Council/Agency Board unanimously (5-0) **Approved** Consent Calendar Items 13-14 as follows:*

13. **JOINT SPECIAL AND REGULAR CITY COUNCIL AND SPECIAL REDEVELOPMENT AGENCY MEETING MINUTES FOR OCTOBER 16, 2002**

Action: ***Approved** the minutes as written.*

14. **JOINT SPECIAL AND REGULAR REDEVELOPMENT AGENCY AND SPECIAL CITY COUNCIL MEETING MINUTES FOR OCTOBER 23, 2002**

Action: *Approved the minutes as written.*

City Council Action

PUBLIC HEARINGS:

15. DEVELOPMENT AGREEMENT AMENDMENT, DA 02-04: SUNNYSIDE-QUAIL CREEK *Continued from 10/16/02 - Ordinance No. 1585, New Series*

Community Development Director Bischoff presented the staff report.

Mayor Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Waived** the reading in full of Ordinance No. 1585, New Series.*

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council **Introduced** Ordinance No. 1585, New Series by Title Only as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING DEVELOPMENT AGREEMENT, DA-02-04: SUNNYSIDE-QUAIL CREEK FOR APPLICATION MP 01-11: SUNNYSIDE-SOUTH VALLEY DEVELOPERS** by the following roll call vote: **AYES:** Carr, Chang, Kennedy, Sellers, Tate; **NOES:** None; **ABSTAIN:** None; **ABSENT:** None.*

16. OUT OF SERVICE AREA REQUEST, OSR-02-02: MANZANITA-MCLAREN *Continued from 10/16/02 - Resolution No. 5618*

Community Development Director Bischoff presented the staff report. He indicated that a replacement resolution has been distributed to the Council this evening that includes a new Section 3 that indicates that this kind of extension would be an administrative action and not subject to CEQA and Section 4 that would require SCRWA approval of the sewer connection before it actually occurs.

Mayor Kennedy inquired if a lift station would be involved with the request in any way as it appears that the sewer lateral is uphill from this property.

Mayor Pro Tempore Carr noted that the diagram shows a city lift station located 310 feet from the property with an existing sewer main coming up the back side of the property.

Director of Public Works Ashcraft stated that he was not sure whether he could answer the question this evening. He said that there were homes in the immediate area that are below the city's gravity sewer. Therefore, they each should have individual lift stations. He said that it appears that the house is uphill and that the homeowners would have to install a pump.

Mayor Kennedy stated that the Council had a similar request in the past when it approved a request for a lift station. The lift station failed and the property owner sued the City, resulting in the City being stuck with an expensive settlement resulting from the failure of a lift station/check valve. He said that he did not want to repeat history again and have this problem occur again.

Council Member Sellers requested City Attorney clarification on what her recommendation would be on Mayor Kennedy's concern. He inquired whether the City was sufficiently protected or whether the Council needs to amend the resolution?

City Attorney Leichter responded that the Council would need to amend the resolution to address Mayor Kennedy's specific concern. She recommended that the applicant be placed on notice and agrees to the condition.

Mayor Kennedy opened the public hearing.

Mayor Kennedy asked the applicant if the requested sewer connection would require a lift station?

Mr. McLaren said that the houses to the left and right to his home have lift stations and that no problems have been experienced with their lift stations.

Ms. McLaren said that 13 years ago, she requested a sewer hook up and that she was turned down due to limited sewer capacity. Since her property was located in the County, all available hookups were to be allocated to residents of the City. After exhausting every avenue, she and her husband decided to patch the septic system the best that they could. She said that they have been trying to patch up the system for 13 years and that it is getting worse. She noted that a sewer connection exists within nine feet from her property and the pump station is located 300 feet from the property. She said that this is an environmental health issue and a problem.

Mayor Kennedy sympathized with the McLaren's situation. However, he said that 5-10 years ago, a similar situation was approved by the City where the pump and the check valve failed and the sewage back flowed from the City main into the home and caused extensive damage. The residents sued the City and the City was stuck in having to pay a substantial cost in damages. He said that this risk exists.

Mr. McLaren indicated that the newer lift stations are built better and have an automatic shut off valve to prevent back flow problems. If built and installed properly, a lift station should not cause a problem. He said that he and his wife would agree to indemnify and hold the City harmless.

No further comments being offered, the public hearing was closed.

City Attorney Leichter informed the City Council that the amended resolution provided to the City Council this evening contains a clerical error under Section 3. She said that this project is exempt from CEQA but is not administrative in nature. She stated that staff would be conforming the resolution to the actual CEQA language.

Action: *On a motion by Council Member Sellers and seconded by Council Member Tate, the*

*City Council unanimously (5-0) **Adopted** amended Resolution No. 5618 as presented by staff this evening, further amending Section 3 as it relates to CEQA and the addition of Section 5 to stipulate that approval of sewer hook-up would be contingent upon the property owners indemnification agreement to the City Attorney's satisfaction being executed.*

17. GENERAL PLAN AMENDMENT, GPA 02-02: WATSONVILLE-CITY OF MORGAN HILL RDA AND ZONING AMENDMENT APPLICATION ZA-02-06: WATSONVILLE-CITY OF MORGAN HILL RDA Continued from 10/16/02 - Resolution No. 5617 and Ordinance No. 1586, New Series

Planning Manager Rowe presented the staff report, indicating that a revised ordinance was distributed this evening that corrects the title block that stipulates Council approval of the zoning amendment as opposed to recommending approval.

Mayor Kennedy opened the public hearing.

Keith Gangitano, 270 Via Noretto, informed the City Council that adjacent residents would like to address the Council under agenda item 17 and not 18 as indicated in the speaker cards. He indicated that property owners bought homes based on the fact that the land was yet undetermined but could be used for a fire station, a park or other uses, but not homes. He felt that the development committee missed an opportunity as the builder of their subdivision wanted to build additional housing. He said that now, 12 units are being proposed in a 1.5 acre space, noting that his subdivision has 24 units on 3.62 acres. He said that Calle Sueno is 90 degrees off of Watsonville Road and is a hazard. He felt that increasing the number of cars by 50% would increase the traffic hazard. He did not believe that the proposed housing project would be compatible with the existing homes. He stated his opposition to rezoning of the property, noting that the residents purchased their homes only a year ago. He recommended that homes be built across the street. He inquired as to the owner of the land as it was his belief that it is already owned by South County Housing, prior to Council consideration of the zoning request.

City Manager Tewes indicated that the land is owned by the Redevelopment Agency of the City of Morgan Hill.

Larry Garcia, 250 Via Noretto, stated that when he moved to Morgan Hill, he fell in love with the area and the small development of 24 homes. He purchased his home based on the indication that a park would be built next to him. He expressed concern that the increased density of low income home homes would impact property values and stated his opposition to the zoning amendment.

Mindy Zhang, 240 Via Noretto, indicated that she moved to Morgan Hill in May, coming from Mountain View. She stated that she spent 1.5 years looking for a home and found Morgan Hill the best city to live in. When she purchased her home, she was told that the land would be built as a small park. Now, she is being told that the land would be developed as residential. She opposed the zone change because of the traffic impact and safety. She recommended that a larger lot be found to build higher density units in order to achieve a better financial return. She did not believe that higher density units would be environmentally friendly. She noted that a small mushroom facility

exists in the vicinity and that the smell in the summer is horrible. She requested that the 1.5 acres be zoned for a public park.

Andy Grouwstra, 251 Via Noretto, concurred with the comments of the previous speakers. He said that at a previous meeting, the Council was presented with a plan for 6 homes and that it has been increased to 12 homes. He said that there is nothing in the plans being presented that would preserve the values of the existing homes with the exception of the front of the homes which have been modified to look like the other homes. He felt that this was a bad development and that the homeowners oppose the project as it is too dense and would decrease the property values of homes.

Ramana Devaraj, 255 Via Noretto, said that homeowners would not be here today if the small parcel had been allowed to be built by the previous builder. She requested that the Council visit the area to assess the area in terms of development. She further requested that the property remain undeveloped for 2-3 years in order to evaluate priorities. She said that South County Housing presented a video depicting 12 homes, noting that only 6 homes are being made affordable to teachers. She did not want to see patchwork development in Morgan Hill. She requested that aesthetic values and priorities be considered.

Natalie Nelson, 261 Via Noretto, fourth generation Morgan Hill resident, stated that the City is proposing a project that would appear good and sugar coated while the residents are looking at its development as new and young. She felt that the City would be changing the environment and the residents' living status in order to build 12 units in a small location. She said that traffic is a concern and that 12 additional units would be coming in and out of a very narrow entrance. She expressed concern that the Council would be making a decision that would impact the rest of the lives of the existing residents. She said that residents are concerned about their children and their environment.

Christine Musselmann, 17235A Oak Glen Avenue, indicated that she is a second year teacher in the Morgan Hill school district and has lived in the community since she was young. She stated that she was excited to see Morgan Hill stepping up to provide affordable homes for purchase by teachers as it is hard to purchase homes in this area. She noted that the 12 homes being proposed do not have back yards but have common areas. She felt that most teachers would be looking to raise families in these homes and would like back yards. She suggested that each parcel be provided their own back yard so that children can play as a park is not available near this area of town.

John Thornberg, 275 Via Noretto, said that his wife was informed by a City employee that the property was owned by South County Housing. If true, he felt that this would be a conflict of interest if the City has already sold the land to the builder. He said that two income families would not be able to move into the proposed units. He felt that cramming residents into small areas would create problems and would adversely affect the neighborhood. He stated his opposition of the rezoning of land for housing.

Alisha Younger, 16975 Del Monte Avenue, indicated that she is a teacher in the community and supported rezone of the property in order to allow teachers to remain in the community. She felt that it was important to look at this issue as there is no affordable housing for teachers.

Parvich Shahab, 225 Via Noretto, stated his opposition to the project. He stated that it was his

understanding that the City of Morgan Hill's implementation of such a project devalues different sections of the City. He said that the neighborhood has a police officer living in the complex who advises residents that she is having problems in some of these type of developments attributed to fights between gang members and drug problems. He inquired who would purchase the homes if teachers, police officers or city employees do not purchase the homes? He inquired what guarantees would there be that the neighborhood would remain safe. He did not believe that there was such a guarantee for safety. It was his understanding that the piece of land was a gift to City to be built as a public facility. If there is not a need for a fire station, he inquired why the City did not give the land back to the original developer?

Pamela Kellogg, 565 Claremont Drive, indicated that she plans to be a teacher, noting that her mother is a teacher. It is her desire to be able to spend the rest of her life in Morgan Hill. She said that it is difficult, on a teacher's salary, to pay high mortgages. If the City does not use this piece of property, she inquired if there was another piece of property that the City could build units for teachers that might be in a better location or less crowded? She said that she understands that homeowners have certain expectations and that it is right to honor them. However, at the same time, she is hoping that Morgan Hill can facilitate the need for teacher housing. If good teachers end up moving away because they cannot afford to live here, it will make it hard to education Morgan Hill's youth. She requested that a compromise be sought.

Marc Davis, 1135 Teresa Lane, a third grade teacher at Barrett Elementary School, stated that he grew up in Morgan Hill. He said that teachers have the American dream of owning a home like everyone else. Hearing about the rezoning of the property to accommodate teachers who do not make enough to afford the median homes of approximately \$580,000 gives him hope of settling in the city and giving back to the community. Based on the preliminary numbers that he has seen, teachers can afford all 12 of the proposed units. He felt that good schools equal good quality of life and good property values. He urged the City and the citizens present this evening, to sacrifice the dirt lot for public service.

Michael Donnelly, 15355 Calle Sueno, concurred with the comments expressed by others opposed to the rezone. He did not believe that placing 12 units would help life styles or property values in the existing development.

Trish DeWett, 1000 Easy Street, stated that she grew up in Morgan Hill and is now a teacher at San Martin-Gwinn School. As a single mother, she decided to return after graduating from college to raise her children in the environment that she was raised, a friendly, caring community where the needs of the residents are foremost. She stated that everyone is aware of the cost of living, especially housing and rent within Morgan Hill. She indicated that she has been on the list for a BMR unit since July 2000. She requested that the Council approve the affordable housing project so that the community can keep the teachers in Morgan Hill and not lose them to other areas that are providing housing or have lower cost of living. The community trusts teachers to teach its children, she requested that the teachers be trusted to own a home in the community.

No further comments being offered, the public hearing was closed.

Mayor Kennedy requested a staff report on agenda item 18 at this time.

Redevelopment Agency Action

OTHER BUSINESS:

18. WATSONVILLE ROAD HOUSING PROJECT

Business Assistance and Housing Manager Maskel presented the staff report indicating that since the last Agency meeting, City and South County Housing staff met twice with the neighboring property owners as well of a focus group of seven teachers. She said that the teachers have indicated that the need for affordable housing is great and were supportive of this type of project. With the Agency's approval of a 12-unit concept, staff is also requesting authority to negotiate a pre development loan with South County Housing not to exceed \$50,000. If approved, staff would return at a later date with a request for approval on the larger loan amount. She indicated that representatives from South County Housing and the architect were in attendance to address the proposed concept in greater detail with regard to design, affordability, comments from the neighbors/teachers, and financial impacts of any changes to the affordability, if the Agency decides to lower the affordability.

Chairman Kennedy inquired about the common space versus back yards for individual families.

Ms. Maskel informed the Agency that the proposed concept offers a small yard space that is designed into each unit.

Dennis Lalor, Executive Director, South County Housing, addressed the Watsonville Road housing project for teachers and public employees. He described the history of South County Housing in Morgan Hill as a private non profit organization founded in 1979 as well as the projects in Morgan Hill and Gilroy, reflecting the philosophy of building affordable, quality housing units. He addressed the concerns expressed regarding the proposed density, stating that he felt that the proposed density of 12 units is appropriate for this development. He said that the existing 3.6 acre, 24-unit development results in a density of 6.6 units per acre and that with the proposed 1.5 acre development of 12-units would equate to a density of 7.7 units per acre. He presented a proposed lot layout, circulation and design for the proposed 12-unit project. He said that the density of 7.7 per dwelling units per acre as opposed to 6.6 density for the adjoining units would result in 1,400 square feet as opposed to 1,800 square feet in the adjacent homes.

Mr. Lalor did not believe that anyone would be able to feel that the density would be bringing down the property values of the adjoining units. He confirmed that he met with teachers and received concerns from the focus group. The ability for teachers to purchase homes is a key in their ability to remain in the community. The teachers felt that there would be more than enough demand to be able to sell the 12 units being proposed and that they were interested in entry level participation and earn equity. He said that three bedroom homes were acceptable and that the size of the yards was important. He provided perspective drawings of the attractive housing project to be built to the standards of adjoining homes. He explained the financial components for this project, including income requirements for the various levels of affordability. He said that any monies received from the Housing Trust fund or any other funding sources would decrease the mortgage amount.

Agency Member Sellers noted that one of the speakers expressed concern about access from Watsonville Road. He inquired what, if anything, was being done to mitigate this concern.

Mr. Lalor said that South County Housing said that public works staff usually imposes requirements to mitigate traffic problems as part of the entitlement process. He was confident that public works staff would take into account what the neighbors have stated.

Agency Member Sellers said that it was important that traffic concerns be addressed. He did not believe that traffic would be slatted to get worse and can only be improved with development. If the City has the opportunity to make the traffic situation better, he felt that the City should take advantage of this fact.

Mayor Kennedy noted that a question was asked about the guarantee that teachers or public employees would be the ones that rent or acquire the units.

Mr. Lalor said that within the constraints of the Fair Housing Laws, South County Housing has targeted populations in all their developments in Morgan Hill. However, South County Housing has not narrowed it to teachers or public employees. He said that there are allowances contained in the law to target a certain population. South County Housing feels that if given the first priority, there would be enough teachers who were interested in these units. He stated that he has been in contact with his attorneys who deal with fair housing activities and that he was confident that South County Housing could make the target population legally enforceable.

Vice-chairwoman Chang inquired if the adjacent development were also duet units?

Mr. Lalor indicated that the adjacent homes were duet units but that they were larger in size. He said that the zoning of the existing development is R-2, similar to the zoning being proposed.

Executive Director Tewes said that Watsonville Road is designated as a four-lane arterial in the City's General Plan Circulation Element with median islands and turn lanes once the area is fully developed.

Chairman Kennedy said that residents in the East Dunne development had to wait a few years until Dunne Avenue was eventually built out to have traffic concerns addressed. He indicated that the City does not have enough resources to install turn lanes and signal lights and that the City relies, to a large extent, on development to pay for the cost of these improvements. He stated that road improvements would occur as development occurs.

Executive Director Tewes provided a recital of the history of the property. He stated that as early as 1980, the property was designated in the general plan for residential purposes and was zoned R-2, 3,500, the very same designation being requested this evening. In the late 1980s, the Council adopted a fire master plan which called for a fire station in this location. In 1989, the developer of the surrounding homes proposed, in order to gain Measure P points, to make the property available for a public facility, a fire station. In 1990, the Redevelopment Agency purchased the land and that in 1992, the zone was changed from R-2, 3,500 to public facilities. Recently, the City adopted a new fire master plan that suggests that the next fire station is better located in the central part of town.

Now, staff is before the Council to request that the zoning be restored to what it was in 1980.

Agency Member Sellers inquired as to procedural steps that need to occur for the two agenda items.

City Manager/Executive Director Tewes indicated that it is staff's recommendation that the Council first consider the General Plan and zoning designations. Item 18 is more a business transaction with a potential purchaser of the property.

17. GENERAL PLAN AMENDMENT, GPA 02-02: WATSONVILLE-CITY OF MORGAN HILL RDA AND ZONING AMENDMENT APPLICATION ZA-02-06: WATSONVILLE-CITY OF MORGAN HILL RDA *Continued from 10/16/02 - Resolution No. 5617 and Ordinance No. 1586, New Series*

Mayor Pro Tempore Carr spoke in support of the zone change, noting that staff is recommending that the general plan and zoning designation return to what was in place 20 years ago. He indicated that the site was designated as a fire station for a period of time. He stated that the City never designated or intended for the site to be a public park. He said that he was sorry that a developer misled individuals who may have purchased homes next to the site. However, a discussion on how to hold developers to their development agreements with regards to what they tell perspective buyers will be a discussion that the Council will have. He said that the Council went through a lengthy process to update the City's Fire Master plan. It was determined that a fire station was not needed in this part of town and that a site was needed more central to the downtown area. He said that it made sense to him that the property is no longer a viable spot for a fire station. Rezoning the land to the exact same zoning to that of the surrounding area made sense to him. He stated his support of this action tonight.

Council Member Chang said that recently she served on the County's Educational Blue Ribbon Task Force whose main focus was to look at how education can be improved countywide. When the Task Force tried to identify the problem, the number one problem identified was that the entire county was lacking qualified teachers. A professor from San Jose State University advised the task force that new teachers would stay in school districts for approximately 1.5 years. After this time period, 30-40% of the teachers leave the area to relocate in the central valley because of the housing values. She indicated that the Task Force is looking for solutions to retain qualified teachers. She understands the hardship it is to have new houses built next to one but that it was her belief that teachers would be the best neighbors that can be found. She felt that the community needs to provide housing for teachers and that the City needs to be able to do what it can to improve the educational system and retain its teachers. She stated her support of the general plan and zone change to residential.

Council Member Sellers noted that approximately a half dozen concerns were expressed this evening, half due to misinformation and some due to lack of information. He said that these concerns are valid but felt that the City has taken a lot of time to make sure that they are addressed. He said that the traffic concern is a silver lining to this project for those individuals who currently reside in the area. He had little doubt that the traffic situation would improve as far as access to Watsonville Road. He stated that the traffic situation would not get worse and would lead to improvements sooner. He felt that the density issue was addressed through the design changes and

with neighbor input. He noted that the density would be almost identical to the adjacent development. He indicated that he resides close to a fire station and that he was perplexed that individuals would want to live adjacent to a fire station as they create disruptions to neighborhoods and did not believe that they add to property values. He was convinced that this project would not harm property values but would improve and enhance their values. He said that he spent a good part of last year going throughout Santa Clara County talking to teachers about home ownership. He said that home ownership for teachers these days is a critical issue. He said that property values would only increase, making it more difficult for teachers to own homes. He stated that the price ranges for these units are affordable to teachers who he spoke with and would allow teachers to become the kind of neighbor that everyone would like to have. He recommended that the City consider a realty disclosure as it is unfair to the Council and the community, as a whole, to have individuals purchase homes and be told things that are not accurate. He felt that it was vital for the Council to take the extra step to make sure that disclosures are provided. He was certain that there would be far more teachers looking at acquiring these properties than affordable units available. He stated his support for this project.

Council Member Tate concurred with the comments expressed by the other Council members. He said that the City is in a fortunate situation and owns this parcel as another alternative site does not exist for the teacher housing project. He said that the units would be going through the development process and that the public would have ample opportunity for input to make sure that the safety issues are addressed and that the homes are compatible. He noted that the Council would also be looking at these issues. He stated his support of the general plan and zoning applications.

Mayor Kennedy said that as he spoke to citizens during the campaign period, one of the concerns and issues he heard from the public is that of the quality of public schools and the education that our children are receiving. He said that one of the things that the City can do is help provide affordable housing for the community's teachers. Therefore, he supports the actions before the City Council as the City needs to do everything it can to work with the School District and School Board to help our public educational system and teachers. He felt that the community needs to help teachers to be able to reside in the community in which they work. He commits to the neighbors that this would be a project that it would not regret having in its neighborhood. He said that the City will do its best to make this a quality project for the neighborhood.

Action: *On a motion by Council Member Chang and seconded by Council Member Sellers, the City Council unanimously (5-0) **Approved** the Mitigated Negative Declaration.*

Action: *On a motion by Council Member Sellers and seconded by Council Member Chang, the City Council unanimously (5-0) **Adopted** Resolution No. 5617.*

Action: *On a motion by Council Member Sellers and seconded by Council Member Chang, the City Council unanimously (5-0) **Waived** the reading in full of Ordinance No. 1586, New Series, as amended.*

Action: *On a motion by Council Member Sellers and seconded by Council Member Chang, the City Council **Introduced** Ordinance No. 1586, New Series by Title only as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF***

MORGAN HILL APPROVING ZONING AMENDMENT ZA-02-06 WATSONVILLE-CITY OF MORGAN HILL RDA CHANGING THE ZONING DESIGNATION FROM PUBLIC FACILITIES TO R2-3,500 ON A 1.55 ACRE SITE. (APN 767-23-017), as amended, by the following roll call vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.

18. WATSONVILLE ROAD HOUSING PROJECT

Agency Member Carr inquired whether the Agency Board was considering, in concept, the development and a predevelopment loan? He noted that when Mr. Lalor went through his presentation, he displayed some charts about affordability that had two different amounts of contribution from the Agency. He inquired whether the Agency was making these decisions this evening or whether the Agency would be moving forward with the concept and would discuss the amount of Agency contribution at a later date?

Ms. Maskel stated that staff is seeking Agency approval to move forward and to work out the predevelopment loan. Staff would flush out the concept, prepare a loan, move ahead, and put together the full agreement and determine what would be needed. She said that it would be helpful to have the Agency Board's input on this issue so that staff can move forward in the right direction.

Executive Director Tewes stated that by approving the concept, the Agency Board is not approving the site and architectural plans for this project. He said that the project would need to go through the entitlement process which would involve public input by various bodies. He said that the City would need to review this concept against city codes and standards to see if variances, if any, would be required. As the City goes through the reviews, the business aspects of the proposal get evaluated as well. He said that it would be helpful to have Council guidance as staff negotiates the agreements to the extent to which the Agency Board would like to see diversity of housing types and affordability ranges.

Agency Member Carr indicated that he received a basic salary schedule for teachers and that \$39,000 is the salary for a second year teacher in the Morgan Hill Unified School District. He said that this is 60% of medium income for the area. He said that \$69,000 (100% of medium income) is the salary of a teacher with 25+ years with the School District. He said that he would be interested in finding ways for the City to use the 60% medium income table versus 80%. He said that the purpose of proceeding with a teacher housing project is to get the entry level teachers who within three years of their careers would be living the community. He felt that the community needs to provide housing to retain teachers in the community. He noted that these are entry level homes and that they are not one's dream home. These homes will allow teachers to start building equity and allow them to remain in the community, become quality teachers, and become mentors for the next generation. He said that the District has half the teachers who are at the upper end who would be retiring and half are at the very young end like the teachers in attendance this evening. He felt that the city would be facing the same problem as teachers will be retiring and teachers would be leaving because they cannot remain in the community. This would result in a struggle to recruit teachers and would result in more teachers on emergency credentials who may not be qualified to teach our children.

Chairman Kennedy stated his support of the 60% medium income table recommendation as well.

Vice-chairwoman Chang inquired as to a resale policy on this type of project?

Ms. Maskell indicated that the resale policy has not been worked out but will be determined.

Agency Member Sellers stated that another reality of not paying teachers adequate wages is the fact that a few tend to marry individuals who are not teachers. He said that he ran into a number of teachers who individually may have made a salary less than \$50,000 but the household income was more than \$100,000. He noted that the City has limited housing dollars and that the City should consider how best to use them. Under further consideration, he stated that he would agree with Agency Member Carr because it would be vital for the community to recruit younger teachers beginning their careers. He said that a lot of the teachers at the other end of the spectrum have been doing so for many years and are getting ready to retire. As this happens, the community would be facing a crisis in the School District and that it would be vital that this gets addressed in a long term solution and not have revolving teachers that are here for a few years and decide that the community they grew up is no longer one that they can afford to live in. He felt that the City needs to stretch the housing dollars as much as possible but understanding that in order to address this problem, the Agency needs to go down and use the 60% range.

Action: *On a motion by Agency Member Tate and seconded by Agency Member Sellers, the Redevelopment Agency Board unanimously (5-0) **Approved** the Concept for the Development of 12 For-Sale Housing Units for Teachers on the Redevelopment Agency (Agency) Owned Property at the Southwest Corner of Watsonville Road and Calle Sueno, per the comments as stated above.*

Action: *On a motion by Agency Member Tate and seconded by Agency Member Sellers, the Redevelopment Agency Board **Directed** Staff to Negotiate, Prepare, and Execute a Pre-Development Loan Agreement with South Council Housing, Not to Exceed \$50,000, Conditioned Upon Review by Agency General Counsel, per the comments as stated above.*

City Council Action

PUBLIC HEARINGS - CONTINUED:

19. ZONING AND DEVELOPMENT AGREEMENT APPLICATIONS, ZAA 00-17/DA 02-06: LLAGAS - DELCO/DIVIDEND - Ordinance Nos. 1587 and 1588, New Series

Community Development Director Bischoff presented the staff report.

Mayor Kennedy opened the public hearing. Dick Oliver, applicant, stated that he was present to answer any questions that the Council may have. No further comments being offered, the public hearing was closed.

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers the*

City Council unanimously (5-0) **Waived** the reading in full of Ordinance No. 1587, New Series.

Action: On a motion by Council Member Tate and seconded by Council Member Sellers the City Council **Introduced** Ordinance No. 1587, New Series, by Title Only, as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO THE PRECISE DEVELOPMENT PLAN ESTABLISHED UNDER ORDINANCE NO. 1522, NEW SERIES, FOR A 62-UNIT R-1 (7,000) & R-2 (3,500)/RPD SINGLE-FAMILY RESIDENTIAL PLANNED DEVELOPMENT LOCATED ON THE SOUTH SIDE OF LLAGAS AVENUE, AND THE WEST SIDE OF HALE AVENUE. (APNS 764-32-005, 010 & 012)** by the following roll call vote: **AYES:** Carr, Chang, Kennedy, Sellers, Tate; **NOES:** None; **ABSTAIN:** None; **ABSENT:** None.

Action: On a motion by Council Member Tate and seconded by Council Member Sellers the City Council unanimously (5-0) **Waived** the reading in full of Ordinance No. 1588, New Series.

Action: On a motion by Council Member Sellers and seconded by Council Member Tate the City Council **Introduced** Ordinance No. 1588, New Series, by Title Only, as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A DEVELOPMENT AGREEMENT, DA 02-06 FOR MP 01-05: LLAGAS-DELCO (APN 764-32-005, 010 & 012)** by the following roll call vote: **AYES:** Carr, Chang, Kennedy, Sellers, Tate; **NOES:** None; **ABSTAIN:** None; **ABSENT:** None.

20. **ZONING AMENDMENT: ZAA-01-12 AND DEVELOPMENT AGREEMENT, DA-02-05: CENTRAL-CENTRAL PARK PHASE V (APN 767-27-037) - Ordinance Nos. 1595 and 1596, New Series**

Planning Manager Rowe presented the staff report.

Mayor Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

Action: On a motion by Council Member Tate and seconded by Council Member Sellers the City Council unanimously (5-0) **Waived** the reading in full of Ordinance No. 1595, New Series.

Action: On a motion by Council Member Tate and seconded by Council Member Sellers the City Council **Introduced** Ordinance No. 1595, New Series, by Title Only, as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO A PRECISE DEVELOPMENT PLAN FOR A 164 UNIT R-1 (7,000) & R-2 (3,500)/RPD SINGLE-FAMILY RESIDENTIAL PLANNED DEVELOPMENT LOCATED ON THE NORTH SIDE OF EAST CENTRAL AVENUE AT CALLE HERMOSA. (APN 726-27-**

037) *by the following roll call vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.*

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers the City Council unanimously (5-0) **Waived** the reading in full of Ordinance No. 1596, New Series.*

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers the City Council **Introduced** Ordinance No. 1596, New Series, by Title Only, as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A DEVELOPMENT AGREEMENT, DA-02-05: EAST CENTRAL - CENTRAL PARK FOR APPLICATION MP-01-10: CENTRAL - CENTRAL PARK DEVELOPMENT, LLC** by the following roll call vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.*

21. AMENDMENT OF MUNICIPAL CODES REGARDING ADOPTION OF THE ADMINISTRATIVE, BUILDING, ELECTRICAL, MECHANICAL, AND PLUMBING UNIFORM CODES - Ordinance Nos. 1589, 1590, 1591, 1592 and 1593, New Series

City Attorney Leichter presented the staff report.

Mayor Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers the City Council unanimously (5-0) **Waived** the reading in full of Ordinance Nos. 1589, 1590, 1591, 1592, and 1593, New Series.*

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council **Introduced** Ordinance No. 1589, New Series, by Title Only, as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING SECTIONS 15.08.010 (ADOPTION OF THE CALIFORNIA BUILDING CODE AND THE UNIFORM BUILDING CODE), 15.08.020 (SHORT TITLE), 15.08.040 (ADDITIONS, AMENDMENTS AND DELETIONS), 15.08.090(A) (SECTION 310.7 AMENDED--SINGLE-ROOM OCCUPANCIES (SRO)), 15.08.100(A) (SECTION 2320.11.3, ITEM 5, DELETED--GYPSUM BOARD USE), 15.08.110(A) (SECTION 2320.11.3, ITEM 7, AMENDED--CONVENTIONAL CONSTRUCTION PROVISIONS (BRACING)), 15.08.120(A) (SECTION 1900.4.4 AMENDED-- MINIMUM SLAB THICKNESS), 15.08.130(A) (SECTION 1806 AMENDED-- FOUNDATION REINFORCEMENT), 15.08.140(A) (SECTION 3205.2 AMENDED--PROJECTIONS AND CLEARANCE), 15.08.150(A) (SECTION 3205 AMENDED BY ADDING SECTION 3205.8--VERTICAL SUPPORTS), 15.08.160(A) (SECTION 3205.3 AMENDED-- MARQUEE LENGTH),***

15.08.170(A) (SECTION 3403.2 AMENDED-- SUSPENDED CEILING UPGRADE), 15.08.190(A) (CHAPTER 13 AND APPENDIX CHAPTER 13 OF THE 1997 UNIFORM BUILDING CODE DELETED), 15.08.200(A) (TABLE 1-A OF THE 1997 UNIFORM BUILDING CODE DELETED), AND 15.08.210 (SECTIONS 904.2.2 THROUGH 904.2.8 OF THE 1997 UNIFORM BUILDING CODE DELETED) OF CHAPTER 15.08 (BUILDING CODE) OF TITLE 15 (BUILDINGS AND CONSTRUCTION) OF THE MORGAN HILL MUNICIPAL CODE, ADOPTING THE 2001 EDITION OF THE "CALIFORNIA BUILDING CODE" VOLUMES 1, 2, & 3, INCLUDING APPENDIX CHAPTERS 3 DIVISION II, 4, 15, 18, 31, 33 AND 34, WITH AMENDMENTS, AS THE BUILDING CODE OF THE CITY OF MORGAN HILL by the following roll call vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.

Action: On a motion by Council Member Tate and seconded by Council Member Sellers the City Council Introduced Ordinance No. 1590, New Series, by Title Only, as follows: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING SECTIONS 15.12.020 (ADOPTION OF THE NATIONAL ELECTRICAL CODE) AND 15.12.060 (ARTICLE 90-4 OF THE 1996 NATIONAL ELECTRICAL CODE), AND DELETING SECTION 15.12.040 (ADDITIONS, AMENDMENTS AND DELETIONS) OF CHAPTER 15.12 (ELECTRICAL CODE) OF TITLE 15 (BUILDINGS AND CONSTRUCTION) OF THE MORGAN HILL MUNICIPAL CODE AND ADOPTING THE 2001 EDITION OF THE "CALIFORNIA ELECTRICAL CODE," PUBLISHED BY THE NATIONAL FIRE PROTECTION ASSOCIATION, WITH AMENDMENTS, AS THE ELECTRICAL CODE OF THE CITY OF MORGAN HILL by the following roll call vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.

Action: On a motion by Council Member Tate and seconded by Council Member Sellers the City Council Introduced Ordinance No. 1591, New Series, by Title Only, as follows: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING SECTIONS 15.16.020 (ADOPTION OF THE UNIFORM MECHANICAL CODE) AND 15.16.040 (AMENDMENTS AND DELETIONS) OF THE MORGAN HILL MUNICIPAL CODE AND ADOPTING THE 2001 EDITION OF THE "CALIFORNIA MECHANICAL CODE," AND THE 2000 EDITION OF THE "UNIFORM MECHANICAL CODE," PUBLISHED BY THE INTERNATIONAL ASSOCIATION OF PLUMBING AND MECHANICAL OFFICIALS, WITH AMENDMENTS, AS THE MECHANICAL CODE OF THIS CITY by the following roll call vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.

Action: On a motion by Council Member Tate and seconded by Council Member Sellers the City Council Introduced Ordinance No. 1592, New Series, by Title Only, as follows: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN

HILL AMENDING SECTIONS 15.20.010 (SHORT TITLE), 15.20.020 (ADOPTION OF THE CALIFORNIA PLUMBING CODE AND THE UNIFORM PLUMBING CODE), 15.20.030 (SCOPE, ORGANIZATION, ENFORCEMENT, FEES AND INSPECTIONS), 15.20.040 (AMENDMENTS AND DELETIONS), 15.20.050 (SECTION 604.2 AMENDED--WATER LINES AND FITTINGS), 15.20.060(A) (SECTION 608.2 AMENDED--PRESSURE REGULATORS), 15.20.070(A) (SECTIONS 609.3.1 AND 609.3.2 AMENDED--PIPING UNDER SLABS), 15.20.080(A) (SECTION 710.1 AMENDED--BACKWATER VALVES), AND 15.20.100(A) (SECTION 1001.0 AMENDED--VENTS AND TRAPS) OF CHAPTER 15.20 (PLUMBING CODE) OF TITLE 15 (BUILDINGS AND CONSTRUCTION) OF THE MORGAN HILL MUNICIPAL CODE TO ADOPT THE 2001 EDITION OF THE "CALIFORNIA PLUMBING CODE," AND THE 2000 UNIFORM PLUMBING CODE PUBLISHED BY THE INTERNATIONAL ASSOCIATION OF PLUMBING & MECHANICAL OFFICIALS, WITH AMENDMENTS, AS THE PLUMBING CODE OF THIS CITY by the following roll call vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers the City Council **Introduced** Ordinance No. 1593, New Series, by Title Only, as follows: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING SECTION 1.01.010 (ADOPTION OF THE MORGAN HILL CODE), OF CHAPTER 1.01 (CODE ADOPTION) OF TITLE 1 (GENERAL PROVISIONS) OF THE MORGAN HILL MUNICIPAL CODE TO INCLUDE THE CURRENT EDITIONS OF THE CALIFORNIA BUILDING, ADMINISTRATIVE, ELECTRICAL, MECHANICAL AND PLUMBING CODES by the following roll call vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.*

22. APPLICATION ZA-02-13: ZONING TEXT AMENDMENT ESTABLISHING PROVISIONS FOR DEVELOPMENT AGREEMENTS - Ordinance No. 1594, New Series

Planning Manager Rowe presented the staff report.

Mayor Pro Tempore Carr inquired whether the development agreements were something that the City can use to help avoid situations such as the one that occurred this evening where a developer is telling home buyers incorrect future development potentials?

City Attorney Leichter said that the Council could condition approval of a project such that the developer does not misrepresent the current zoning status of its property or surrounding properties to potential buyers. She said that staff will be looking at ways that the City can encourage developers to be more informative about these items either in the conditions of approval or in the development agreements or by adopting an ordinance that would require divulgence of such facts by real estate brokers.

Planning Manager Rowe said that the City requires that developers disclose to home buyers the presence of the mushroom farm. He stated that staff wanted to make sure that residents were aware of the agricultural use in the proximity and that this was conditioned upon development.

Mayor Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

Action: *On a motion by Council Member Sellers and seconded by Mayor Pro Tempore Carr, the City Council unanimously (5-0) **Approved** the Mitigated Negative Declaration.*

Action: *On a motion by Council Member Sellers and seconded by Mayor Pro Tempore Carr, the City Council unanimously (5-0) **Waived** the reading in full of Ordinance No. 1594, New Series.*

Action: *On a motion by Council Member Sellers and seconded by Mayor Pro Tempore Carr, the City Council **Introduced** Ordinance No. 1594, New Series, by Title Only, as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL ENACTING CHAPTER 18.80 OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL REGARDING DEVELOPMENT AGREEMENTS** by the following roll call vote: **AYES:** Carr, Chang, Kennedy, Sellers, Tate; **NOES:** None; **ABSTAIN:** None; **ABSENT:** None.*

City Council Action

OTHER BUSINESS:

23. KENT CONSTRUCTION - SUBSTITUTION OF SUBCONTRACTORS

City Attorney Leichter presented the staff report.

Mayor Kennedy opened the floor to public comment.

Larry Kent, Kent Construction, informed the Council that a substitution was made in the project that is allowed. He said that the condition that applied in this instance was that the plumbing subcontractor, after he was awarded the job and pursuing job subcontracts, informed him that he would be unable to meet the insurance requirement. The subcontractor's broker was checking into the insurance at the time he bid the job. The subcontractor nor Kent Construction knew that insurance had not been secured at time of bid. Kent Construction listed him as their subcontractor of record. It was not until he formalized it with the subcontractor in qualifying his bid that it was discovered that this was a problem. He indicated that the subcontractor requested that he be allowed to withdraw his bid. Kent Construction was faced with either waiving the insurance requirements, which he could not do, or go to the second lowest bidder. Kent Construction decided to go with the second lowest bidder in this case. The issue came up for discussion at one of the meetings with the playhouse management team. He said that he dropped the ball in pursuing further paper work on the substitution. He stated that there was no bid chopping that occurred in this instance. He noted that the second lowest bidder was hired at no cost to the city and that he is having to sign a contract

for more money than what was budgeted for the plumbing line item. He has reviewed the labor codes as they relate to the allegations and stated that he did not believe that there were violations on his part. He requested that the Council clear Kent Construction's name and approve the substitution. He indicated that both plumbers were in attendance on his behalf and would be available for questions.

No further comments were offered.

Council Member Sellers said that the initial concerns raised by staff were appropriately raised. If it were the case that there was bid chopping, everyone would be concerned. He stated that he was contemplating the appropriate mitigation. He said that based on the fact that Mr. Kent has to pay more to get the same job done would be sufficient in this particular case. He felt that the Council needs latitude because there may be times where the punishment would be greater for the City than it would be for the vendor given this certain situation. He did not believe that assessing a fine would make sense in a case such as this one. He appreciated having this issue brought to the Council's attention and that it was something that the City needs to be diligent about. However, in this instance, it was his belief that the situation has been rectified.

Mayor Kennedy inquired how this situation can be avoided in the future?

Glenn Ritter responded that in order to avoid this situation in the future, staff would watch the subcontractors list a lot closer and its distribution prior to being distributed as public records. Staff would verify that any substitutions would be noted on the list. He stated that this is how this whole oversight occurred.

Mayor Kennedy requested that this be reflected in the record so that this does not happen again.

Mayor Pro Tempore Carr did not believe that any bid chopping occurred in this case. He said that he has had the opportunity to discuss this matter with the City Attorney and Mr. Kent and that he has read the code as well. He noted that a letter he read suggested a severe penalty. It was his belief that covering this cost would be something that would be warranted and would make sense to make sure that the City is not out any cost in preparing the report, including the City Attorney's time to follow this issue and respond appropriately. He felt that the cost to the City is very minimal and that it would be a fair penalty to impose as a result of this instance. He felt that a \$1,000 cap would be an appropriate amount to charge.

Council Member Sellers inquired if staff could come up with the cost of staff time spent on this issue.

City Attorney Leichter indicated that staff has not been keeping track of the time spent responding to this issue. She said that staff could estimate how much time it has taken to review letters and draft responses and research the Public Contracts Code.

Council Member Tate did not support imposing a penalty because situations arise and mistakes are made. He said that the City has staff in place to deal with them and to make recommendations about preventing mistakes in the future. He agreed that a mistake was made and that it has been admitted.

He felt that there was a penalty with having to go to the second low bidder.

Council Member Chang concurred with Council Member Tate's comments.

Mayor Kennedy also concurred with Council Member Tate's comments and that he did not believe that a financial penalty was in order in this case. It was his belief that Kent Construction acted in good faith and did not try to mislead the City in anyway. Also, Kent Construction is incurring additional costs to go to the next low bidder. He felt that this was a sufficient penalty in itself.

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council unanimously (5-0): 1) **Made a Finding** that a violation of the Public Contracts Code provisions governing substitution of subcontractors occurred; 2) that a **penalty not be imposed**, and 3) **approved** the substitution with the second low bid subcontractor.*

24. ADOPT RESOLUTIONS OF NECESSITY FOR PROPERTY ACQUISITION FOR PROPOSED BUTTERFIELD EXTENSION, PHASE IV - Resolution Nos. 5621, 5622, 5623 and 5624

Public Works Director Ashcraft presented the staff report.

Mayor Kennedy opened the floor to public comment.

Dr. Biedermann distributed to the Council a packet of information relating to his property. He indicated that he has a deep commitment to Morgan Hill and would like to see it move forward. He indicated that he purchased his property in 1985 and that there was a rumor about an expressway that was to be built called Sutter Boulevard. In 1991, he received a copy of the official plan line for Sutter Boulevard. He noted that the boulevard seemed to stop at Tennant Avenue and that he inquired as to the plan beyond Tennant Avenue. He was advised that it would be worked out at a future date and that it would be equitable so that his property would not be adversely affected. Since that time, there have been various scenarios of how the then Sutter, now Butterfield Boulevard would be laid out. He addressed the legged and s-curved layout. He received a letter from the appraiser indicating that there was to be acquisition notification of his property for a plan that he had never seen before. He said that this was not an official agreement and immediately prompted discussions. He made an appointment to see Bill McClintock who reviewed the situation and stated that he was as surprised as anyone because the alignment with the s-curve would always be considered. He said that there was no indication that there would be a straight thru alignment and that he was never notified about the public hearings relating to the EIR for the Butterfield extension.

Dr. Biedermann said that in 1993, he was asked to sell land in order to increase the width of Tennant Avenue. He agreed to sell the land. However, in the 2001 proposal, nothing more came of the issue. He raised the question about the propriety of the way the s-curved had been changed to a straight line. On September 12, 2002, he received a revised offer letter, forgetting about the idea that there was to be a Butterfield Boulevard extension and a corner cut from his property. He said that this plan does not make sense to him and stated his objections. He did not believe that this was a plan but an expediency in order to obtain a small section of land that is important for Johnson Lumber.

He felt that it was also important, as property owners, to know the ultimate plans. He stated that he could not agree to a plan that has been hastily put together. He did not believe that this would be long term negotiations. He stated that he has not approved the plan and that he does not want to be considered as an obstructionist. He requested that he be notified of EIR hearings that effect his property and wanted to know where the extension would go south of his property. He did not support carving out his property which would make it less than useful. He requested better consideration with the identification of where Butterfield is to go so that it can be acted upon in total and not piecemeal approval.

Mayor Kennedy referred to the plan of May 2002. He noted that Mr. Biedermann's parcel is indicated as 14 acres net.

Mr. Biedermann stated that his parcel started out as 15 acres in 1985 but by the time of Tennant Avenue addition and this proposal, it is down to 11 or 12 acres. He said that the City has requested that he not consider this area as isolated parcels. Staff wanted to consider the entire 29 acres that represent owners who do not want to develop at this time. He provided a plan for the entire 29 acres. The plan identifies plot lines where buildings could be accommodated but that it does not mean that the buildings would be cited as presented. He stated that the drawings were submitted to the planning department in May 2002.

No further comments were offered.

Council Member Seller requested clarification of the s curve and where it went.

Director of Public Works Ashcraft said that he has not been provided with copies of what has been provided to the Council by Dr. Biedermann. He said that in June 1992, a form letter was sent to all property owners within the alignment of the proposed Butterfield Boulevard from Cochrane to Middle Avenue regarding the draft environmental impact report (EIR) for the Sutter Boulevard Extension, notifying the property owners of the public hearings by the planning commission on June 23, 1992. He indicated that notices were sent to 60 property owners and includes Dr. Biedermann relating to the EIR being processed through the City. Included in the back of the EIR was a large fold out map showing the Butterfield alignment all the way from Cochrane to Middle Avenue in a straight line alignment of more than 1,000 feet past Tennant Avenue. In 1992, the plan line shows a straight line through Dr. Biedermann's property. He noted that the s-curve was centered on Fisher Avenue. Therefore, an s-curve was in the final document but was located over 700 feet south of Dr. Biedermann's property. He stated that has not been able to find anything in the city's records that shows an s-curve as presented by Dr. Biedermann. He said that the proposed alignment matches Dr. Biedermann's page 5 exhibit that shows the entire 155 feet right of way on his vacant parcel of land. He said that approximately 1.5 years ago, the City tried to acquire the entire 700-foot stretch of 155 feet of right way. The City had problems had problems in the negotiations. It was stated by either Dr. Biedermann or his represented that it might be easier to make an offer to buy the property needed as it became clear that the city was not planning to build the street through the entire 700-foot length. Subsequently, he indicated that the city's legal counsel has looked at this proposal who is now comfortable with purchasing only the 150 depth of the 155 foot width for the right of way area, especially if the city has to take it through eminent domain. The City can pursue the purchase of the remainder land at a later date. If through the negotiations, the property owner believes that

it was in his best interest to settle on the entire 700 feet without the use of eminent domain, he felt that the city would be prepared to do so. He said that the city is willing to take all of the property at this time or take the front half of the property through negotiations.

Dr. Biedermann said that there is nothing in anyone's file that can be produced that he asked for the little corner to be chopped out. He stated that he did not want the small area chopped out. He said that he would like to have the location of the s-curve issue resolved in writing.

Mayor Kennedy felt that the proposal to proceed with the resolution of necessity to acquire the small parcel begins to include the beginning of the s-curve. If the city was to proceed with negotiations on this parcel, it would result in very little difference with an s-curve or straight line. Should the City proceed with the resolution of necessity, he inquired whether there was latitude, should the City decide that it makes sense to proceed with an s-curve on this parcel?

Gale Connor, City Counsel, said that from a legal stand point, the City is still in the planning process for the balance of the Butterfield Boulevard extension project. He said that the originally approved project for which there was CEQA compliance by means of the 1992 EIR would need to be revisited/reopened if the road is to be rerouted or changed in any way other than a straight line. He said that the design of the road is still in the planning process and could be realigned to an s-curve or other configuration as it is not in the implementation phase. He said that alternative alignments could be studied.

Council Member Sellers inquired whether the Council would be better advised to try to resolve this sooner rather than later because it is impacting an adjacent property owner? In addition, he felt that Dr. Biedermann would be more predisposed to work with the City on the acquisition should the City be able to find resolution to this issue.

Mr. Connor said that it was his understanding that from a traffic safety perspective, this piece of property is required for the build out for the Butterfield Boulevard extension, commencing early next year. Also, this property is required for traffic safety. If the Council was to go back and study a brand new alignment across the entire length of the property, then the City would not be in a position to acquire this piece of property at this time. He did not know the effect it would have on the balance of the Butterfield Boulevard project. Should the City wish to realign the road, the City would need to restudy it and place the adjacent property owners on notice that there is a new plan for alignment which would necessitate new studies and planning approvals. This would delay beyond the time of planned construction of Butterfield Boulevard extension.

City Attorney Leichter said that what is being proposed is something that is necessary for traffic safety to implement a project that the City has currently planned and has environmental clearance for. If the City is looking at realigning the roadway, this may require further environmental review and/or clearance and may also require further eminent domain proceedings that have not been contemplated to date. Therefore, the most conservative approach is to take the land that is currently needed. She indicated that the City only needs this portion of the parcel both from an environmental stand point and from an eminent domain stand point.

Council Member Sellers felt that this is a far more extensive process and that the best that may be

offered to Dr. Biedermann is the assurance that the acquisition is being considered and would not preclude realignment in the future. He did not believe that the City could provide assurances that the City would align it now.

City Attorney Leichter said that the only thing that staff is recommending is that the City Council approve the resolution of necessity. She stated that negotiations would continue after this point. She said that should the Council wish to explore alternatives, staff would do so.

Mayor Pro Tempore Carr said that he was not sure whether the discussion of an s-curve or a straight alignment was important for tonight's discussion. He noted that the City has an EIR that was approved 10 years ago for a straight alignment and that all property owners in the area should have looked at this map 10 years ago to see what the alignment was. If the Council was to state that it would open up the possibility of someday going back and turning it into an s-curve, he felt that the City is opening its doors to a lot more. He felt that the Council would be suggesting that the City could possibly be taking property from an existing business instead of an open field. He did not believe that this makes sense. The action before the Council is to approve resolution of necessity for the 150 x 155-foot piece of property. If Dr. Biedermann would like to discuss the entire stretch of property, he did not know if it would preclude the City from having this conversation. He noted that Dr. Biedermann asked a question whether the stub included a plan for the future. He said that this information is contained in a 10-year-old EIR that has been approved and has gone through a state required CEQA process. Therefore, this is the plan for the future of what the alignment would be. He felt that the whole discussion about changing the alignment in the future would be a mistake to even have that conversation.

Mayor Kennedy recommended that the Council move forward with this item. He felt that there was very little impact to Dr. Biedermann's property with or without the s-curve. In light of the schedule that the City needs to move forward with the Butterfield extension, the City needs to proceed for this portion of the property. He said that should there be an s-curve, there may be a slight change which could be worked out at the planning process. He felt that the City needs to proceed as it is critical that the City gets Butterfield cut through to Tennant based on the timeline. He recommended that the Council proceed with the resolution of necessity.

Council Member Sellers said that it was not his intent to extend the discussion this evening. He felt that it was crucial for the Council to go through this discussion because the property owner had a different impression of what was happening than City staff. He did not believe that it was fair for the Council to proceed unless the property owner has some sense that their understanding is the same as that of the City's. He stated that he concurred with everyone's discussion and urged Dr. Biedermann to continue with negotiations proceed as this is only an initial step with a lot of steps to take between now and the initial acquisition.

Council Member Tate concurred with Mayor Pro Tempore Carr's comments. However, he was disturbed that information was being turned into the planning department that shows something that has been out dated for 10 years.

City Manager Tewes said that it often happens that applicants submit ideas of what they propose by means of conceptual plans.

Action: *On a motion by Mayor Kennedy and seconded by Mayor Pro Tempore Carr, the City Council unanimously (5-0) **Adopted** Resolutions of Necessity Nos. 5621, 5622, 5623, and 5624, for Portion of Properties Identified as APNs 817-029-004, 817-058-009, 817-008-026, and 817-059-006 for the Proposed Butterfield Boulevard - Phase IV Improvements Project.*

Action: *On a motion by Council Member Tate and seconded by Mayor Pro Tempore Carr, the City Council unanimously (5-0) **Approved** the Expenditure of \$349,500 Plus Escrow and Closing Costs for the Acquisition of These Four Properties.*

Council Member Chang recommended that items 26, 27 and 28 be continued to a future meeting.

25. STAFF RESPONSE TO DEVELOPMENT PROCESSING SERVICES STUDY

City Manager Tewes presented the staff report.

Mayor Kennedy opened the floor to public comment. No comments were offered.

Council Member Tate said that a red flag was raised about the ease of use of the Tidemark System. He noted that the recommendation is to evaluate this concern over a period of time. He felt that this may not be the right system to use as it is indicated that there is a greater investment, training and system maintenance than anticipated for the software to be used effectively.

Council Member Sellers stated that Tidemark is the universal system being considered in the industry.

Mayor Kennedy said that he served on a committee on Smart Permitting and that the Tidemark System was the system that was adopted by most cities as the standard for on line permitting. He said that it is common and widespread in its use.

City Manager Tewes said that staff would be evaluating Tidemark and would be returning to Council with recommendations in January 2003.

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers the City Council unanimously (5-0) **Accepted Recommendations** Made by MAXIMUS for Improving Development Processing Services.*

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers the City Council unanimously (5-0) **Considered Staff Report** on the Status of Implementing Recommendations.*

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers the City Council unanimously (5-0) **Directed Staff** to Report Again on the Implementation of Recommendations in April 2003.*

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers the*

*City Council unanimously (5-0) **Directed** Staff to Study Training and Staffing Needs Associated With Increased Deployment of Automated Permit Processing Software, and to Report Back in January 2003.*

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers the City Council unanimously (5-0) **Directed** Staff to Establish a Process for Council Adoption of a New Development Processing Fee Schedule, Which Would be Effective July 1, 2003.*

26. UPDATE ON BUDGET AND REVENUE FORECAST

Action: *On a motion Council Member Sellers and seconded by Council Member Tate, the City Council unanimously (5-0) **continued** this item to November 13, 2002.*

27. FUND RESERVE AND DESIGNATION POLICY

Action: *On a motion Council Member Sellers and seconded by Council Member Tate, the City Council unanimously (5-0) **continued** this item to November 13, 2002.*

28. COUNCIL DIRECTION REGARDING SCHEDULING OF SPECIAL MEETINGS

Action: *On a motion Council Member Sellers and seconded by Council Member Tate, the City Council unanimously (5-0) **continued** this item to November 13, 2002.*

CLOSED SESSIONS

City Attorney Leichter indicated that the continued closed session item could wait to another meeting date.

FUTURE COUNCIL-INITIATED AGENDA ITEMS

No items were identified.

ADJOURNMENT

There being no further business, Mayor/Chairperson Kennedy adjourned the meeting at 11:05 p.m.

MINUTES RECORDED AND PREPARED BY

IRMA TORREZ, City Clerk

